

NUMBER: 1471

TITLE: Faculty Grievance Committee and Hearing Panels: Composition and Procedures

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I. Composition and Term of Services

A. Composition and Selection of the Committee

1. The Faculty Grievance Committee shall consist of five (5) full-time faculty members, two of whom shall be tenured full-time teaching and research faculty members and shall be appointed by the Faculty Senate, two of whom may be administrative faculty members and shall be appointed by the president as described in paragraph 2 below, and the fifth of whom shall be a tenured full-time teaching and research faculty member and shall be selected by the other four. The fifth member of the committee, as selected by the other four, shall be the committee's chair.
2. Presidential appointment(s) to the Grievance Committee shall be made as follows: After consultation with the president, the Executive Committee of the Faculty Senate shall recommend to the president five (5) administrative faculty members for service on the Grievance Committee. From the recommendations of the Executive Committee, the president shall choose the presidential appointee(s) to the committee.

B. Term of Service

1. Except as otherwise provided herein, a Faculty Grievance Committee member shall serve a term of two calendar years, commencing August 1 in a year and ending July 31 of the second year thereafter.
2. All members of the committee, including those initially appointed to one-year terms, may be reappointed to consecutive terms.
3. The chair shall serve a two-year term and may be appointed to serve consecutive terms.
4. If a vacancy in a position on the committee occurs during mid-term, it shall be filled as the position was filled at the commencement of the term and the individual designated to fill the position shall serve until the expiration of the original term unless reappointed.

5. Members of the committee shall make diligent efforts to attend all meetings of the committee. The committee may declare vacant the position of a member who is absent from three (3) committee meetings during the course of a year.

II. Procedures of the Committee

A. General

1. All questions to be decided by the committee shall be decided by a majority of the committee members present and voting. A quorum of the committee shall be four members. Unless otherwise provided herein, all questions to be decided by the chair and all actions to be taken by the chair may be decided or taken by the chair's designated representative on the committee if the chair is unavailable to make such decisions or to take such actions.
2. It shall be the responsibility of the chair of the Grievance Committee to initiate the proper procedures for review of a matter which is referred to the committee. A matter arising under the Faculty Grievance Policy shall be reviewed in accordance with the procedures described in section II(B). A matter arising under section III of the Faculty Sanctions Policy shall be reviewed in accordance with the procedures described in section II(C). A matter arising under the policy on Dismissal of Faculty from Employment Due to Financial Exigency or Discontinuance of a Program of Study or Department of Instruction shall be reviewed in accordance with the procedures described in section II(D).
3. All notices required by these procedures to be given shall be in writing and shall be considered given as required when hand delivered to the party to whom notice is being given or when delivered by certified mail to the party's residence address, as currently on record with the university, or to such other address as the party may provide to the individual giving notice. Notice to the chair of the Grievance Committee, to the chair of the Hearing Panel, or to an administrative officer in a matter before the committee shall be considered given as required when hand delivered to the office where the chair or such administrative officer receives mail.
4. Except as provided in paragraphs 5 and 6, designated vacation days of the university and days between the end of one academic year and the beginning of the next academic year shall not be included in calculations of the time periods specified in these procedures. This provision is applicable only to the Faculty Grievance Policy, the Faculty Sanctions Policy, or any other university policy or procedures, unless otherwise provided in that policy or procedure.
5. Generally, the committee will not be active during the months between the end of one academic year and the beginning of the next academic year. However, the committee may continue its activity after the end of an academic year when necessary to complete review of a matter pending before the committee,

particularly if, in the committee's judgment, a delay until the beginning of the next academic year would have a substantial adverse effect upon a party's interests. Under such circumstances, the time periods described in these paragraphs shall be calculated by excluding only designated vacation days of the university.

6. The president may request that the chair of the committee initiate the applicable procedures of the committee during the months between the end of one academic year and the beginning of the next academic year when necessary for review of a matter arising during those months under the Faculty Sanctions Policy. Upon receiving such a request, the chair shall initiate the applicable procedures of the committee and may call meetings of the committee as necessary. During those months, a quorum of the committee shall be three (3) members, so long as one Faculty Senate appointee and one presidential appointee are present, and the time periods described in these procedures shall be calculated by excluding only designated vacation days of the university.

B. Procedures for Review of a Faculty Grievance

1. Within thirty (30) days of the chair's receipt of a written statement of faculty grievance, the committee shall determine whether the written statement was filed in a timely manner, is adequate in that it meets the requirements of section III(A)(2) of the Faculty Grievance Policy, and describes a matter which the committee has the authority to review under the Faculty Grievance Policy.
 - a. If the committee should decide that the written statement of grievance is inadequate in that it does not meet the requirements of section III(A)(2) of the Faculty Grievance Policy, the grievant shall be advised of the deficiencies in the statement and shall be provided a reasonable time, as determined by the committee, within which to forward an adequate statement to the chair. If the faculty member does not file a statement which the committee determines to be adequate within such reasonable time, the committee may decide not to review the grievance. If the committee so decides, it shall notify the faculty member accordingly. If the faculty member does file a statement which the committee determines to be adequate within such reasonable time, the committee shall have fourteen (14) days from the chair's receipt of the adequate statement within which to determine whether the grievance was filed in a timely manner and whether the committee has authority to review the matter described in the statement. The timeliness of the filing of the grievance shall be determined by the date the initial statement was filed, although the committee may have determined it to be inadequate, so long as the committee has not closed the matter by deciding not to review the grievance.

- b. If the committee should decide that the written grievance was not filed in a timely manner or that the matter described in the grievance is not within the authority of the committee to review, the committee shall decide not to review of the grievance. The faculty member shall be notified of the committee's decision and the reasons therefore.
 - c. If the committee should decide that the written statement was filed in a timely manner, is adequate, and describes a matter over which the committee has authority, the grievant and the administrative officer against whom the grievance was filed shall be notified that the committee will review the grievance, and the administrative officer shall be provided a copy of the written statement filed by the grievant.
 2. Within fourteen (14) days of receipt of the committee's decision that it will review a grievance, the administrative officer against whom the grievance was filed shall provide to the chair and to the grievant a written response to the written statement of the grievance. The response should be no more than 1,000 words in length and should include, as attachments, copies of relevant documentation.
 3. Within fourteen (14) days of the chair's receipt of the administrator's response, the chair shall impanel a Hearing Panel as described in section III(A). The chair shall provide the written statement of grievance, the administrator's response, and attached documentation to the chair of the Hearing Panel.
 4. The proceedings on the grievance before the Hearing Panel shall be in accordance with the procedures of the Hearing Panel as described in section IV.
 5. Upon concluding its hearing procedures and upon making its findings on the merits of the grievance, as described in section IV, the panel shall determine its recommendation for dismissal or remedy of the grievance and shall report to the chair of the Grievance Committee as described in section IV.
- C. Review by Hearing of Matters Arising Under Section III of the Faculty Sanctions Policy
 1. Prior to the president's request that the chair of the Grievance Committee initiate the applicable procedures to dismiss or to sanction severely a faculty member, the administrative official designated by the president shall notify the faculty member of the president's intent to make such a request. This notice to the faculty member shall include a statement of charges.
 2. The president's request to the chair of the Grievance Committee shall include a copy of the statement of charges provided to the faculty member.

3. The statement of charges shall include a specific description of the charges, a summary of the evidence upon which the charges are based, a list of witnesses whose identities are known, a summary of the expected testimony of those witnesses, and a recommendation of sanctions.
4. The Grievance Committee shall determine whether the statement of charges is procedurally adequate in that it meets the requirements of paragraph 3 above. If the committee should decide that the statement of charges is procedurally inadequate in that it does not meet the requirements of paragraph 3 above, the administrative official shall be advised of the deficiencies in the statement and within a reasonable time, as determined by the committee, shall forward an adequate statement to the faculty member and to the chair. The chair shall not initiate the following procedures until the administrative official has presented an adequate statement of charges.
5. Within fourteen (14) days of the chair's receipt of an adequate statement of charges, the chair of the Grievance Committee will impanel a Hearing Panel as described in section III(A). The chair shall provide the written statement of the charges and the responses of the faculty member, if any, to the chair of the Hearing Panel.
6. The faculty member may respond in writing to the statement of charges at any time prior to the hearing. The faculty member's failure to respond to the charges shall not constitute an admission of the charges. The faculty member's response, if any, shall be made to the chair of the Grievance Committee. Upon receipt of a faculty member's response, the chair of the Grievance Committee shall forward a copy to the administrative official who presented the charges and a copy to the chair of the Hearing Panel, if the panel has been constituted.
7. During each and every stage of the proceedings on the statement of charges, the faculty member may choose to appear, to be heard or not.
8. Each party may be represented by legal counsel or by an adviser or both during each and every stage of the proceedings.
9. The burden of proving the charges shall be on the administrative official.
10. The proceedings before the Hearing Panel on the statement of charges shall be in accordance with the procedures of the Hearing Panel as described in section IV(A) and IV(B).
11. If the panel should conclude that none of the charges against the faculty member were proven, the proceedings before the panel will terminate and the panel will report to the chair of the Grievance Committee as described in section IV(C) with a recommendation that the charges be dismissed.
12. If the panel should find the charges proven in whole or in part, it shall convene a hearing on the sanction.

13. At the hearing on the sanction:
 - a. The administrative official and the faculty member shall have the right to present evidence, including witnesses and documentary evidence, and to present arguments on the question of the appropriate sanction, including evidence in mitigation or aggravation of the seriousness of the charges and evidence as to the implications of the charges for the welfare of the university.
 - b. The previous disciplinary record of the faculty member may be considered by the panel but becomes relevant only at this stage of the proceedings.
 - c. Except as otherwise provided in this paragraph, the hearing on the sanction shall be conducted in accordance with the procedures described in sections IV(A) and IV(B).
 14. At the close of the presentation of evidence on the sanction, the Hearing Panel shall adjourn the hearing and shall reconvene with only members of the panel present and shall determine its recommendations as to the sanction(s) to be imposed upon the faculty member.
 15. The panel may recommend dismissal of the faculty member or the imposition of another severe sanction, or if it finds that the proven charge does not warrant imposition of a severe sanction, it may recommend that a minor sanction be imposed.
 16. Upon determining its recommendation, the panel shall report to the chair of the Grievance Committee as described in section IV(C).
- D. Procedures Upon Review of a Matter Involving the Dismissal of Faculty From Employment Due to Financial Exigency, Etc.
1. Within fourteen (14) days of the chair's receipt of a request from the president that the Grievance Committee review the appeal of a faculty member from a notice of termination issued to that faculty member under the policy for Dismissal of Faculty From Employment Due to Financial Exigency, etc., the chair of the committee shall impanel a Hearing Panel.
 2. The chair of the Grievance Committee shall provide a copy of the faculty member's appeal and notice of termination to the chair of the Hearing Panel.
 3. The Hearing Panel shall review the notice of termination in accordance with the procedures described in section IV.

4. The president or an administrative official designated by the president shall appear in proceedings before the Hearing Panel in support of the notice of termination issued to the faculty member.
5. The faculty member shall bear the burden of proving that the president's decision to issue notice was arbitrary, capricious, unreasonable, or contrary to the facts or that there was a material deviation from the university's policies or procedures in the issuance of the notice.
6. Each party may be represented by an adviser who may be legal counsel.
7. Faculty members from the same department of instruction or program of study may appear before the Hearing Panel collectively if they should so choose.

III. Hearing Panels

A. Composition of the Panels

1. The committee shall not hear matters brought before it but shall designate Hearing Panels for that purpose. A Hearing Panel shall consist of five (5) full-time faculty members and shall be selected on a case-by-case basis.
2. Each member of the Faculty Grievance Committee, including the chair, shall designate one member of a Hearing Panel.
3. After committee members have designated the Hearing Panel members, the chair of the Grievance Committee shall appoint one of the designated members to be the chair of the panel.
4. A Grievance Committee member who has taken a prejudicial public position on a matter before the committee, who has a personal interest in a matter before the committee, or who has a close personal or direct professional relationship with either of the parties in a matter before the committee shall not designate a member of the Hearing Panel for that matter. Such Grievance Committee member shall disqualify himself or herself and shall disclose to the committee the grounds for disqualification. No person may serve on the Grievance Committee or a Hearing Panel if he/she is the person against whom the grievance is brought.
5. In the event that a member of the Grievance Committee appointed by the president is disqualified or is otherwise unable to designate a Hearing Panel member, the other presidential appointee on the committee shall designate one additional Hearing Panel member. In the event that a member of the Grievance Committee appointed by the Faculty Senate is disqualified or is otherwise unable to designate a Hearing Panel member, the other Faculty Senate appointee on the committee shall designate one additional Hearing Panel member. In the event that the disqualified or otherwise unavailable

member of the Grievance Committee is the chair, the remaining four members of the Grievance Committee shall designate the fifth member of the Hearing Panel and appoint its chair.

6. Only full-time faculty members whose duties are primarily nonadministrative in nature are eligible to serve on Hearing Panels. A Hearing Panel constituted to hear the case of a tenured faculty member shall consist of tenured faculty members. A Hearing Panel constituted to hear the case of a nontenured faculty member shall consist of at least one (1), but not more than two (2) nontenured faculty members. No more than two (2) members of the panel may be from the college of the faculty member whose case will be heard by the panel. No more than one (1) member of the panel may be from the library if the faculty member whose case will be heard is from the library. There shall be no restriction as to the colleges of panel members selected to hear the case of an administrative faculty member who has no departmental designation.
7. The department chair and other members of the department of the faculty member whose case will be heard are ineligible to serve on the Hearing Panel constituted to hear the case.
8. Department chairs are ineligible to serve on a Hearing Panel constituted to hear a grievance in which the action of a department chair is the action being grieved.
9. It shall be the responsibility of the chair of the Faculty Grievance Committee to assure that members of the Hearing Panel meet the requirements described herein. In order to assure that such requirements are met, the chair may limit, as to college and as to tenure status, the designations made by Grievance Committee members. Limitations upon such designations should be evenly applied to designations made by Faculty Senate appointees on the committee and to designations made by presidential appointments on the committee.
10. Either party in a case may challenge individual members of the panel for cause. "Cause" may include the taking of a prejudicial public position on the matter to be heard, a personal interest in the matter to be heard, or a close, personal or direct professional relationship with either of the parties. The Grievance Committee shall decide disputes over the legitimacy of a challenge.
11. Members of a Hearing Panel should voluntarily disqualify themselves from hearing matters which raise as to them grounds for challenges for cause, whether or not such challenges have been made.
12. Any Hearing Panel member who has a close personal or direct professional relationship with the person filing a grievance or the administrator against whom the grievance is filed must disqualify herself/himself from serving on that case.

IV. Procedures of the Hearing Panel

A. Prior to the Hearing

1. At least five working days prior to a hearing all parties must submit all written documents and exhibits to be considered at the hearing to the chair of the Hearing Panel. The chair will distribute, or otherwise make available, all materials to both parties at least two working days before the hearing.
2. The Hearing Panel shall be provided and shall review all statements and attached documentation filed by the parties in the cases before the panel.
3. The Hearing Panel, with the consent of both parties, may meet with the parties prior to the hearing to discuss procedures, to clarify the issues, to exchange documentary evidence, to make stipulations of fact, and to take any other actions necessary to expedite the proceedings.
4. At any stage of the proceedings, the Hearing Panel may call upon the chair of the Grievance Committee or the Grievance Committee as a whole for procedural advice concerning the matter before the panel.
5. The chair of the Hearing Panel shall set the date, time, and place of the hearing. Insofar as is possible within the guidelines described in paragraphs 5 and 6, the hearing shall be set at a date and time which is convenient to all parties and continuance of the hearing date may be granted by the chair of the Hearing Panel upon the request of either party or upon the panel's own motion.
6. A hearing on a matter arising under the Faculty Grievance Policy and under the policy on Dismissal of Faculty from Employment Due to Financial Exigency, etc. should be held no less than fourteen (14) days and no more than forty-five (45) days after impaneling of the Hearing Panel. Upon agreement of all parties, a hearing may be held earlier than fourteen (14) days and, in extraordinary cases as determined by the chair of the Grievance Committee, a hearing may be held later than forty-five (45) days.
7. A hearing on a matter arising under the Faculty Sanctions Policy shall be held no less than thirty (30) days and no more than sixth (60) days after notice of the statement of charges is given to the faculty member. Upon agreement of all parties, a hearing may be held earlier than thirty (30) days and, in extraordinary cases as determined by the chair of the Grievance Committee, a hearing may be held later than sixty (60) days.
8. Fourteen (14) days prior to the hearing, the chair of the Hearing Panel shall notify each party of the date, time, and place of the hearing. A party may agree to waive this notice. All parties not given timely notice must agree to waive notice before the hearing may be held as scheduled.

9. Except as provided in paragraph II(C)(7), each party who has been given timely notice or who has waived timely notice is expected to appear in person at the hearing. If any such party should fail to appear, the chair of the Hearing Panel may decide, in the chair's sole discretion, to proceed with the hearing in the party's absence. If the chair of the Hearing Panel should decide to proceed, the party's absence shall not invalidate the hearing.

B. At the Hearing

1. The administrative official and the faculty member in the case before the panel shall present evidence by calling and questioning witnesses, by introducing the documentary evidence, or otherwise. Each party shall have the right to ask questions of witnesses called by the other party or by the Hearing Panel.
2. During the proceedings on the grievance before the Hearing Panel, each party to the grievance may have one adviser. The adviser may assist the party in the presentation of the matter before the Hearing Panel.
3. The burden of proving the allegations of the grievance shall be upon the faculty member.
4. The hearing shall be closed. The faculty member may request that the faculty and administrative staff of the university be invited to attend the hearing. If the faculty member so requests, the hearing shall be open to as many members of the faculty and administrative staff as can be accommodated in the hearing room.
5. In conducting the hearing, the Hearing Panel shall admit all evidence determined by it to be relevant and not cumulative and shall accord such evidence the merit it deserves. The panel may limit the number of witnesses to prevent repetitive or cumulative testimony and may grant adjournments as it deems necessary.
6. The Hearing Panel may determine, on its own motion, the necessity of calling witnesses additional to those called by the parties and of examining documentary evidence additional to that presented by the parties.
7. The university will make its best efforts to assist the parties and the Hearing Panel in obtaining witnesses and documentary evidence. Each party in a case before the panel shall have access to all records needed to present that party's case except as follows:
 - a. Access to records covered by the Family Education Rights and Privacy Act of 1974, as amended (Section 438 of the General Education Provisions Act, Title IV of Public law 90-247, as amended) shall be in accordance with the provisions of that act.

- b. Access to records covered by the Virginia Privacy Protection Act of 1976 (2.1-377 et seq. of the 1950 Code of Virginia, as amended) shall be in accordance with the provisions of that act; and
 - c. There shall be no right of access to records excluded absolutely by the provisions of the Virginia Freedom of Information Act (2.1-340 et seq. of the 1950 Code of Virginia, as amended).
 - 8. The chair of the Hearing Panel will preside at the hearing and will rule, on the panel's behalf, on all procedural questions which arise during the hearing. A panel member who does not agree with the chair's ruling on a procedural question may ask that the question be decided by the panel and the question shall be so decided. All questions on the merits will be decided by the panel.
 - 9. A transcript or recording shall be made of the hearing.
- C. After the Hearing
 - 1. At the close of the presentation of evidence, the Hearing Panel shall adjourn the hearing and shall reconvene with only members of the panel present to make its findings and to arrive at its conclusions and recommendations for dismissal or remedy of the grievance.
 - 2. The Hearing Panel shall create a report which shall include the following:
 - a. Copies of statements and attached documentation filed by the parties in the matter before the panel;
 - b. The names of the parties and their advisers;
 - c. The names of witnesses appearing before the panel;
 - d. The findings and recommendations of the panel which must include addressing the charges brought by the faculty member; and
 - e. The recommendations of the panel and the reasons therefore.
 - 3. The report shall be certified as correct by each Hearing Panel member who participated in the decision.
 - 4. The chair of the Hearing Panel shall provide the report to the chair of the Grievance Committee and shall provide a copy of the report to each party.
 - 5. A copy of the transcript or recording of the hearing shall accompany the report provided to the chair of the Grievance Committee. The transcript or recording shall be made available to the parties.
- D. Decisions by a Hearing Panel and Its Chair

1. All questions to be decided by a Hearing Panel shall be decided by a vote of panel members present and voting.
2. A quorum of the panel shall be four members.
3. Generally, a panel member who has not attended a substantial portion of each hearing session held in a case should not vote in the panel's decision on the merits of the case or on the panel's recommendation in the case. In the event that a question is raised by either party or by other panel members as to the propriety of a panel member's vote because of that panel member's absences, the question shall be referred to the Grievance Committee for determination.
4. All questions to be decided by the chair of the panel and all actions to be taken by the chair may be decided or taken by the chair's designated representative on the panel if the chair is unavailable to make such decisions or take such actions.

V. Grievance Committee's Review and Report

A. Review and Report of the Hearing Panel

1. Within thirty (30) days of the chair's receipt of the Hearing Panels report, the Grievance Committee shall review the report and shall determine whether the procedural requirements of the committee and of the Hearing Panel were met and whether the recommendations made by the panel were within the authority of the Grievance Committee and the panel to make.
2. Before making such a determination, the committee may request and consider written or oral statements from the parties or their designated representatives on questions of procedure or on questions regarding the committee's authority to make the recommendations proposed by the panel. Each party must be provided a copy of any written statement filed by the other party and each party must be provided the opportunity to be present when an oral statement is made by the other party.

B. Action and Report of the Grievance Committee

1. If the Grievance Committee should decide that procedural errors were committed which were substantially prejudicial to either party, the committee may refer the matter to the original Hearing Panel for a rehearing of the matter or may impanel another Hearing Panel for a rehearing of the matter. The committee shall provide a reasonable time within which the rehearing must be completed and a report provided to the chair of the committee.
2. If the Grievance Committee should decide that the recommendations made by the panel are not within the authority of the committee or of the panel to

recommend, the committee shall refer the matter to the Hearing Panel for a redetermination of its recommendations. The Hearing Panel shall report its revised recommendations to the committee within a reasonable time, as determined by the committee.

3. Upon the Grievance Committee's determination that procedural requirements were met and that the recommendations of the Hearing Panel were within the authority of the committee or the panel to make, the Grievance Committee shall so certify and shall adopt the report and recommendations of the Hearing Panel as the report and recommendations of the Grievance Committee.
4. The chair of the Grievance Committee shall advise the chair of the Hearing Panel and both parties of any action taken by the Grievance Committee upon its review of the report of the Hearing Panel. Both parties shall be provided copies of any new or revised reports issued by the Hearing Panel.
5. The chair of the Grievance Committee shall transmit the report and recommendations of the Grievance Committee to the president (see section IV of the Faculty Grievance Policy).